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Kenneth A. Levy
Vice President and
General Counsel

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 21, 1997

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW - Room 222
Washington, DC 20554

Re: Administration of the North American Numbering Plan (CC Docket No. 92-237) and Toll Free Service Access Codes (CC Docket No. 95-155, Third Reports and Orders, (FCC 97-372), released October 9, 1997

Dear Ms. Salas:

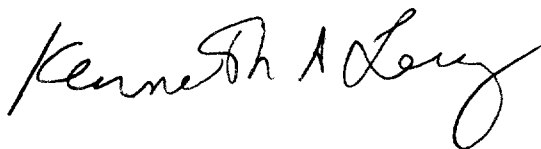
Pursuant to the above-captioned Orders, the National Exchange Carrier Association, Inc. (NECA) is filing a proposed certificate of incorporation and draft By-Laws for the North American Numbering Plan Billing and Collection Agent, which will be a subsidiary of NECA. This filing is being made in advance of the Commission's December 12, 1997 due date.

These papers are being submitted as they will be filed with the State of Delaware except that NECA has not yet finalized the name of the subsidiary. NECA will report the name to the Commission prior to filing.

NECA awaits the prompt approval of these documents so that the subsidiary may begin its billing and collection work. If you have any questions, please call the undersigned.

I am submitting two copies of this notice to the Office of the Secretary. Please acknowledge receipt here by affixing a notation on a duplicate copy of this letter furnished herewith for such purposes and remitting same to the bearer.

Sincerely,



cc: R. Metzger
G. Matisse

No. of Copies rec'd
List ABOVE

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DRAFT

November 20, 1997 5:00 PM

BY-LAWS

OF

[NAME] (a Delaware corporation)

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

ARTICLE I

STOCKHOLDER

1. **STOCKHOLDER**. The National Exchange Carrier Association, Inc. (NECA) shall be the sole stockholder of the Corporation and shall act in compliance with the Federal Communications Commission's ("FCC" or "Commission") Rules¹ and NANP² Order when exercising its stockholder duties and powers.

2. **CERTIFICATES REPRESENTING STOCK**. Certificates representing stock in the Corporation shall be signed by, or in the name of, the Corporation by the Chairperson or Vice-Chairperson of the Board of Directors, if any, or by the designated Officers of the Corporation. Any or all the signatures on any such certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent, or registrar at the date of issue.

Whenever the Corporation shall be authorized to issue more than one class of stock or more than one series of any class of stock, the certificates representing shares of any such class or series, shall set forth thereon the statements prescribed by the Delaware General Corporation Law. Any restrictions on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificate representing such shares.

The Corporation may issue a new certificate of stock in place of any certificate theretofore issued by it, alleged to have been lost, stolen, or destroyed, and the Board of Directors may require the owner of the lost, stolen, or destroyed certificate, or his or her legal

¹47 C.F.R. §§ 52.7 et seq. (FCC Rules).

²In the Matter of Administration of North American Numbering Plan Toll Free Service Access Codes, Third Report and Order and Third Report and Order, CC Docket No. 92-237 and CC Docket No. 95-155, FCC 97-372, released October 9, 1997 (FCC NANP Order). References to FCC Orders throughout this document will refer to the FCC NANP Order and any other orders the Commission may issue concerning the NANP billing and collection function.

representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate or the issuance of any such new certificate.

3. STOCK TRANSFERS. Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, transfers or registration of transfers of shares of stock of the Corporation shall be made only on the stock ledger of the Corporation by the registered holder thereof, or by his or her attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation or with a transfer agent or a registrar, if any, and on surrender of the certificate or certificates for such shares of stock properly endorsed and the payment of all taxes due thereon.

4. MEANING OF CERTAIN TERMS. As used herein in respect of the right to notice of a meeting of the stockholder or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be, the term "share" or "shares" or "share of stock" or "shares of stock" or "stockholder" refers to an outstanding share or shares of stock and to a holder of record of outstanding shares of stock when the Corporation is authorized to issue only one class of shares of stock, and said reference is also intended to include any outstanding share or shares of stock and any holder of record of outstanding shares of stock of any class upon which or upon whom the certificate of incorporation confers such rights where there are two or more classes or series of shares of stock or upon which or upon whom the Delaware General Corporation Law confers such rights notwithstanding that the certificate of incorporation may provide for more than one class or series of shares of stock, one or more of which are limited or denied such rights thereunder; provided, however, that no such rights shall vest in the event of an increase or a decrease in the authorized number of shares of stock of any class or series which is otherwise denied voting rights under the provisions of the certificate of incorporation, except as any provision of law may otherwise require.

PROXY REPRESENTATION. The stockholder may authorize another person or persons to act for him or her by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the stockholder or by his or her attorney-in-fact. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

VOTING. Each share of stock shall entitle the holder thereof to one vote. Subject to the FCC's NANP Order and Rules with regard to the appointment of directors, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Any other action shall be in compliance with FCC Rules and Orders and shall be authorized by a majority of the votes cast except where the Delaware General Corporation Law prescribes a different percentage of votes and/or a

different exercise of voting power, and except as may be otherwise prescribed by the provisions of the certificate of incorporation and these By-Laws. In the election of directors, and for any other action, voting need not be by ballot.

5. STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the Delaware General Corporation Law to be taken at any annual or special meeting of the stockholder, or any action which may be taken at any annual or special meeting of the stockholder, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holder of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and such action shall be in compliance with FCC Rules and Orders. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to the stockholder who has not consented in writing. Action taken pursuant to this paragraph shall be subject to the provisions of Section 228 of the Delaware General Corporation Law and in compliance with FCC Rules and Orders.

ARTICLE II

DIRECTORS

1. FUNCTIONS AND DEFINITION. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation. Pursuant to the FCC NANP Order, no member of the Board of Directors shall receive compensation but each such member shall be entitled to receive reimbursement for expenses directly incurred as a result of his or her participation on the Corporation's Board. The use of the phrase "whole board" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

2. QUALIFICATIONS AND NUMBER. The qualifications and number of directors shall be determined in accordance with the FCC NANP Order. The number of directors may be increased or decreased by the stockholder at the direction of the Commission. The initial Board of Directors shall consist of fourteen persons in the following composition: (i) Two directors shall represent domestic incumbent local exchange carriers; (ii) Two directors shall represent domestic interexchange carriers; (iii) Two directors shall represent non-domestic carriers; (iv) Two directors shall represent competitive local exchange carriers; (v) Two directors shall represent wireless carriers; (vi) Two directors shall represent consumer groups; and (vii) Two directors shall represent state and international regulatory bodies. A director shall cease to be a director of the Corporation and shall be subject to removal by the stockholder if such director (a) changes his or her affiliation (as defined in this section 2) with the entity that made him or her

eligible for membership on the Board and (b) upon such change is not affiliated with the entity or constituency that nominated him or her.

3. ELECTION AND TERM. The first Board of Directors, unless the members thereof shall have been named in the certificate of incorporation, shall be elected by the Incorporator and shall hold office for a term of two years until the first biennial election and until their successor directors are elected and qualified or until their earlier resignation or removal. Thereafter, directors who are elected in the biennial election, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next biennial election and until successor directors are elected and qualified or until their earlier resignation or removal. Any director may resign at any time upon written notice to the Corporation. Unless a director is removed or resigns, he or she will serve a term of two years.

4. NOMINATION AND ELECTION OF BOARD MEMBERS. Nomination and selection of the Board shall be conducted and biennial elections of the Board shall be held pursuant to the FCC NANP Order and the Corporation's policies. The stockholder will elect the Board members.

5. REAPPOINTMENT OF INCUMBENT BOARD MEMBERS. There shall be no limitation on additional terms for Board members. At the end of each two-year term, an incumbent may be re-elected pursuant to the process outlined in section 4 above.

6. MEETINGS.

TIME. Meetings shall be held at such time as the Board shall fix but no less than on a quarterly basis. Special meetings of the Board may be called by the Chairperson of the Board at any time. Upon the written request of three directors, a special meeting of the Board of Directors must be called by the Chairperson of the Board or Secretary, to be held not more than fifteen (15) days after receipt of such request.

PLACE. Pursuant to the FCC NANP Order, all meetings of the Board shall be open to the public and held in Washington, D.C.

CALL. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of the Chairperson of the Board, if any, the Vice-Chairperson of the Board, if any, the designated Officers of the Corporation, or of a majority of the directors in office.

NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER. No notice shall be required for regular meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time

for the convenient assembly of the directors thereat. Notice need not be given to any director or to any member of a committee of directors who submits a written waiver of notice signed by him before or after the time stated therein. Attendance of any such person at a meeting shall constitute a waiver of notice of such meeting, except when he or she attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors need be specified in any written waiver of notice.

QUORUM AND ACTION. A majority of the whole Board shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon a majority of the directors in office shall constitute a quorum, provided, that such majority shall constitute at least one-third of the whole Board. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the Delaware General Corporation Law, the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. The quorum and voting provisions herein stated shall not be construed as conflicting with any provisions of the General Corporation Law and these By-Laws which govern a meeting of directors held to fill vacancies and newly created directorships in the Board or action of disinterested directors.

Any member or members of the Board of Directors or of any committee designated by the Board, may participate in a meeting of the Board, or any such committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

CHAIRPERSON OF THE MEETING. The Chairperson of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the Vice-Chairperson of the Board, if any and if present and acting, or the designated Officers of the Corporation, if present and acting, or any other director chosen by the Board, shall preside.

MINUTES OF THE MEETING. All actions taken at Board meetings, including open sessions to the public, conference call meetings and closed executive sessions where proprietary matters are discussed and reviewed, shall be recorded by the Secretary of the Corporation in written minutes. These written minutes shall be made available to the public as early as two weeks after the meeting has been conducted and no later than one week prior to the next Board meeting. Actions that involve proprietary information shall be summarized in sufficient detail to inform the public of the action taken but without infringing on any privacy rights.

7. REMOVAL OF DIRECTORS. As provided by the Delaware General

Corporation Law, any director or the entire Board of Directors may be removed, with or without cause. Removal may only occur upon the affirmative vote of the stockholder or the majority of board members that are not facing removal. Upon the removal of one or more directors, the Corporation will initiate a nomination and selection process in accordance with the FCC NANP Order to replace the director(s) removed. Upon nomination of the new director(s), the Board will elect such director(s), who shall serve the remaining term of the removed director(s).

8. COMMITTEES. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each such committee and member thereof shall serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation with the exception of any authority the delegation of which is prohibited by Section 141 of the Delaware General Corporation Law, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

SUBCOMMITTEES. Each committee, through a resolution, may establish subcommittees and determine the composition thereof. A subcommittee shall have, only, such authority as is delegated to it by the committee.

REPORTS. All committees and subcommittees shall keep books of separate minutes. All committees shall report all their actions at every regular meeting of the Board of Directors, or as often as may be directed by the Board. All subcommittees shall report all their actions to the committee which appointed them, at every regular meeting of that committee, or as often as may be directed by that committee.

9. WRITTEN ACTION. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee. These minutes shall be made available to the public in accordance with Article II, Section 6 of these By-Laws.

ARTICLE III

OFFICERS

The officers of the Corporation shall consist of a Secretary and Treasurer, and, if deemed necessary, expedient, or desirable by the Board of Directors, a Chairperson of the Board, a Vice-Chairperson of the Board, and such other officers with such titles as the resolution of the Board of Directors choosing them shall designate. Except as may otherwise be provided in the resolution of the Board of Directors choosing him or her, no officer other than the Chairperson or Vice-Chairperson of the Board, if any, need be a director. Any number of offices may be held by the same person, as the directors may determine.

Unless otherwise provided in the resolution choosing him or her, each officer shall be chosen for a one calendar year term and until his or her successor shall have been chosen and qualified. Elections of officers shall be the first order of business in the first Board of Directors meeting at the beginning of the calendar year.

All officers of the Corporation shall have such authority and perform such duties in the management and operation of the Corporation as shall be prescribed in the resolutions of the Board of Directors designating and choosing such officers and prescribing their authority and duties, and shall have such additional authority and duties as are incident to their office except to the extent that such resolutions may be inconsistent therewith. The Secretary of the Corporation shall record all of the proceedings of all meetings and actions in writing of the stockholder, directors, and committees of directors, and shall exercise such additional authority and perform such additional duties as the Board shall assign to him or her. Any officer may be removed, with or without cause, by the Board of Directors. Any vacancy in any office may be filled by the Board of Directors.

ARTICLE IV

CORPORATE SEAL

The corporate seal shall be in such form as the Board of Directors shall prescribe.

ARTICLE V

FISCAL YEAR

The fiscal year of the Corporation shall begin on the first day of January in each year and

end on the last day of December in each year.

ARTICLE VI

CONTROL OVER BY-LAWS

Subject to the provisions of the certificate of incorporation, the provisions of the Delaware General Corporation Law and FCC Rules and Orders, the power to amend, alter or repeal these By-Laws and to adopt new By-Laws may be exercised by the stockholder or the Board of Directors.

ARTICLE VII

GENERAL PROVISIONS

1. **CONTRACTS.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances and shall be in compliance with the FCC Orders and Rules.

2. **INDEMNIFICATION.** In accordance with Section 145 of the General Corporation Law of Delaware, the Corporation shall indemnify any director, officer, employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

To the extent that a director, officer, employee or agent has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in the two paragraphs above (Section 145 (a) and (b) of the General Corporation Law of Delaware), or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Any indemnification under subsections (a) and (b) of Section 145 of the General Corporation Law of Delaware (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in such subsections. Such determination shall be made (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (3) by the stockholder.

Expenses (including attorneys' fees) incurred by a director, officer, employee or agent in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director, officer, employee or agent to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized by the General Corporation Law of Delaware. The indemnification and advancement of expenses provided by, or granted pursuant to the General Corporation Law of Delaware shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-Law, agreement, vote of stockholder (in compliance with FCC Rules and Orders) or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. The

Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under Section 145 of the General Corporation Law of Delaware.

The foregoing right of indemnification shall in no way be exclusive of any other rights of indemnification to which any such person may be entitled under any By-Law, agreement, vote of members, or disinterested directors or otherwise, and shall inure to the benefit of the heirs, executors and administrators of such a person.

3. INSURANCE. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, to the full extent allowable under Section 145(g) of the Delaware General Corporation Law.

4. ADDITIONAL FCC REQUIREMENTS. The Corporation is subject to certain FCC audit, reporting, accounting, record keeping, information sharing and nondisclosure requirements which are specifically described in the FCC NANP Order and Rules.

ARTICLE VIII

DISSOLUTION

Subject to compliance with the FCC Order and Rules and approval by the FCC Chairperson, if it should be deemed advisable in the judgment of the Board of Directors of the Corporation that the Corporation should be dissolved, the Board by a majority of the whole Board, at any meeting called for that purpose, shall adopt a resolution to dissolve the Corporation, shall cause notice of the adoption of said resolution and notice of a meeting of the stockholder to take action upon said resolution, to be mailed to the stockholder entitled to vote thereon pursuant to the provisions of the Delaware General Corporation Law.

Upon approval of said dissolution by the stockholder entitled to vote thereon, a certificate of dissolution shall be filed with the Secretary of State pursuant to and in accordance with the provisions of the Delaware General Corporation Law, and shall become effective in accordance with such law. Upon such certificate becoming effective in accordance with the Delaware General Corporation Law, the Corporation shall be dissolved.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CERTIFICATE OF INCORPORATION

OF

[NAME]

1. The name of the Corporation is [NAME].
2. The Registered Office of the Corporation in the State of Delaware is to be located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The Registered Agent in charge thereof is CORPORATION TRUST COMPANY.
3. The purpose is as defined in the Federal Communications Commission's ("FCC" or "Commission") rules at 47 C.F.R. § 52.7 et seq. as it exists today and as it may be amended. As described in the aforementioned Commission rules, the Corporation is responsible for the collection of funds to support numbering administration for telecommunications services from the United States telecommunications industry and North American Numbering Plan (NANP) member countries. The Corporation may also engage, so long as it is consistent with FCC Orders and Rules, in any other lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

The Corporation does not contemplate pecuniary gain or profit and is organized for nonprofit purposes.
4. The total number of shares of stock, which the Corporation shall have authority to issue, is One Hundred (100) and all such shares shall be common stock with a par value of \$0.01 per share. The National Exchange Carrier Association, Inc. shall be the sole stockholder of the Corporation and shall act in compliance with the FCC Rules and Orders when exercising its stockholder duties and powers. The Corporation shall not have members.
5. The name and mailing address of the sole incorporator is David F. Hoyle, Secretary of National Exchange Carrier Association, Inc., 100 South Jefferson Road, Whippany, NJ 07981.
6. After the original or other By-Laws of the Corporation have been adopted, amended, or repealed, as the case may be, in accordance with the provisions of Section 109 of

the General Corporation Law of the State of Delaware, after the Corporation has received any payment for any of its common stock, the power to adopt, amend, or repeal the By-Laws of the Corporation may be exercised, consistent with FCC Rules and Orders, either by the stockholder or the Board of Directors of the Corporation.

7. No director of the Corporation shall be personally liable to the Corporation or its stockholder for monetary damages for breaches of fiduciary duty as a director, provided that this provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholder; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the General Corporation Law of Delaware; or (iv) for any transaction from which the director derived an improper personal benefit. No repeal or amendment of this Article SEVEN shall adversely affect any rights or any person pursuant to this Article SEVEN with respect to acts or omissions occurring prior to such repeal or amendment.

8. The Corporation reserves the right to increase or decrease its authorized capital stock, or any class or series thereof, and to reclassify the same, and to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, under which the Corporation is organized or in any amendment thereto, in the manner now or hereafter prescribed by law and all rights conferred upon stockholder in said Certificate of Incorporation or any amendment thereto are granted subject to the aforementioned reservation.

I, THE UNDERSIGNED, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this _____ day of December, 1997.

David F. Hoyle, Sole Incorporator